

Hon. Ronald B. Leighton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

JULIE BALLOU,

Plaintiff,

vs.

JAMES McELVAIN, P.H.D., in his
individual and representative capacity; and
CITY OF VANCOUVER, a municipal
corporation,

Defendants.

No. 3:19-cv-05002-RBL

ORDER GRANTING STIPULATED
MOTION TO SET TRIAL DATE AND
STAY CASE PENDING
INTERLOCUTORY APPEAL

The parties, by and through undersigned counsel, stipulate as follows:

1. On April 17, 2020, the Court entered an order denying qualified immunity to Defendant James McElvain on Plaintiff's allegations under the First and Fourteenth Amendment. (Dkt. 67.)

2. The Court of Appeals has jurisdiction to review on interlocutory appeal all legal issues tied to a district court's denial of qualified immunity. *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985); *accord Plumhoff v. Rickard*, 572 U.S. 765, 771-73 (2014).

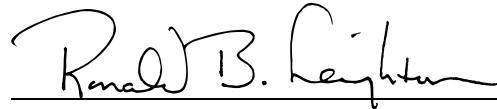
3. Defendant McElvain has filed a notice of appeal. (Dkt. 73.) This divests the district court to proceed to trial on issues that will be considered by the Ninth Circuit. *City of Los Angeles v. Santa Monica Baykeeper*, 254 F.3d 882, 886 (9th Cir. 2001); *Chuman v. Wright*, 960 F.2d 104, 105 (9th Cir. 1992).

1 4. The parties have already stipulated, and the Court has agreed, to vacate all
2 pretrial deadlines. (Dkt. 72.) The parties now agree that this matter should be STAYED until
3 the conclusion of the appeal. However, the parties recognize that this matter will proceed to
4 trial regardless of how the Ninth Circuit decides the appeal, and as such ask the Court to set a
5 trial date after September 1, 2021, with the understanding that the date should be continued if
6 the appeal is not fully resolved within 60 days of the trial date. The parties will email their
7 dates of unavailability, if any, to the Court's Courtroom Deputy.
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9 **ORDER**

10 IT IS SO ORDERED.

11 DATED on June 2, 2020.

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14 Ronald B. Leighton
15 United States District Judge
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